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OFFICE OF PETITIONS

In re Application of
James W. Cree et al.
Application No. 09/491,721
Filed: January 27, 2000
Attorney Docket No. 31358-233

ON PETITION

This is a decision on the renewed petition under 37 CFR 1.137(a), filed October 23, 2003, to revive the above-identified application. This petition is being treated as a petition to withdraw the holding of abandonment under 37 CFR 1.181(b), in accordance with the reasoning of the decision in Delgar Inc. v. Schuyler, 172 USPQ 513.

The petition is **Granted**.

This application became abandoned on March 11, 2003, for failure to file a timely response to the Final Office Action mailed December 9, 2002, which set a three (3) month shortened statutory period for reply. No extensions of the time for reply under 37 CFR 1.136(a) were obtained. Accordingly, a Notice of Abandonment was mailed July 31, 2003.

While petitioner entitles the petition as one to withdraw the holding of abandonment, petitioner argues that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(a) was unavoidable and pays the fee under 37 CFR 1.17(l).

The file record discloses that a Final Office Action was mailed December 9, 2002 to the office of Jenkins and Gilchrist. Petitioner, P. Weston Musselman, Jr., was the Attorney of Record for Jenkins and Gilchrist. Mr. Musselman is also the attorney of record for Fish and Richardson and has provided copies of pages from the Fish and Richardson docketing system, wherein receipt of the Final Office Action would have been entered, had it been received.¹

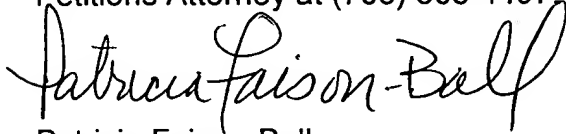
In that the statement from Mr. Musselman that the Final Office Action was not received, and exhibits from the Fish and Richardson docketing system, it is apparent that the Final Office Action was not received and the evidence submitted all corroborates non-receipt of the Final Office Action.

In view of the facts set forth in the petition, it is concluded that the Final Office Action was never received at the offices of Jenkins and Gilchrist, the address of record at the time the Final Office Action was mailed. Accordingly, the holding of abandonment is withdrawn. The petition fee in the amount of \$110.00 and \$750.00 for the Request for Continued Examination (RCE) are unnecessary and has been credited to Deposit Account No. 06-1050. Likewise, the RCE will not be entered.

¹Mr. Musselman filed a revocation and new power of attorney August 8, 2003.

This application is being forwarded to Technology Center 1771 for appropriate action on the amendment filed September 8, 2003.

Telephone inquiries concerning this matter should be directed to the undersigned
Petitions Attorney at (703) 305-4497

A handwritten signature in cursive script that reads "Patricia Faison-Ball". The signature is written in black ink and is positioned above the printed name.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions